IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

APPELLATE JURISDICTION

CIVIL APPLICATION (ST)No.19703 OF 2005.
WITH
CIVIL APPLICATION (ST) No. 33025 OF 2004
IN
WRIT PETITION NO. 2566 OF 2004 .

Chandrakant @ Ashok G. Kumar ... Applicant..
V/s.
Faijulla Hasanbi Tapia & ors. ... Respondents.

Shri Ashok Tejane with Nitin Muley i/b Girish Godbole for the Applicant.

Shri D.D. Madon i/b Kishore Thakordas for the respondents.

CORAM : V.C.DAGA, J.

DATED : 8.3.2006.

P.C. :

. Heard learned Counsel for the applicant.

2. Civil Application (st) No. 33025/04 has been filed for bringing heirs of respondent Nos. 2 and 4 on record.

3. It is not in dispute that respondent No.2 expired on 15.4.1998; whereas respondent No.4 expired on 28.4.1996. The substantive writ petition was filed on 21.1.2003.

4. In the above view of the matter, it is needless to mention that when petition was filed respondents were already dead. The petition

preferred against the dead person was stillborn and was no petition in the eye of law. O.22 R.4 of C.P.C. will not revive the petition, when the deaths of the respondents come to light. In the circumstances, application under O. 22 R.4 of C.P.C. for substitution will not be maintainable. (see AIR 1965 Cal.459).

5. Apart from above, it is not in dispute that the deceased respondent Nos.2 and 4 were step brothers of the petitioner/applicant . It appears from the cause title of the petition that they were staying where applicants stay i.e. Block No.5, Room No. 38, 9th Lane, Kamathipura, Mumbai-400 008.

6. A statement on oath is made by the applicant that he came to know about the death of respondent Nos. 2 and 4 i.e. his step-brothers somewhere in the month of March 2004 i.e. after six years; prima facie, does not inspire judicial confidence. It is difficult to accept that deaths of brothers which have taken place on 14.4.1998 and 28.4.1996 respectively, would not be known to another brother staying in the same premises. The statement made in this behalf is thus, not acceptable.

7. Be that as it may. Let me examine the

strength of the submissions made from another angle. In the application on oath a statement is made that for the first time knowledge of death of the said respondents was acquired by the applicant in the month of March 2004 when unserved notices came back.

8. The application for substitution under consideration appears to have been prepared and was ready on 5.3.2004 which is clear from date typed on the application. The said application for the first time was affirmed on 23.12.2004. It is, therefore, clear that even though application for substitution was ready, but the same was filed after 9 months. This delay has not been accounted for. In the circumstances, there is inordinate delay in filing application. This delay has not been explained. Apart from this there is no material on record to establish belated knowledge of death of brother staying in the same premises. In my opinion, case sought to be made out is absolutely false.

9. For the reasons referred to hereinabove Civil Application No. 33025/04 is liable to be rejected on both count with no order as to costs.

10. So far as second application viz. C.A. No. 19703/05 is concerned, applicant desires to bring legal heirs of deceased respondent Nos. 2I(a) to 2I(j) on record. in view of the rejection of

earlier civil application for the reasons recorded in paras 1 to 8 , this civil application cannot survive.

. Both civil applications are thus, rejected with no order as to costs.

(V.C. DAGA,J.)